

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

FRIENDS OF THE SAN JUANS, P.J.  
TAGGARES COMPANY, COMMON SENSE  
ALLIANCE, WILLIAM H. WRIGHT, AND SAN  
JUAN BUILDERS ASSOCIATION,

Petitioners,

v.

SAN JUAN COUNTY,

Respondent.

**Case No. 13-2-0012c**

**ORDER DENYING MOTIONS FOR STAY**

This matter comes before the Board on a motion for stay filed by Petitioners Common Sense Alliance and P. J. Taggares Company (collectively CSA).

**BACKGROUND**

By Final Decision and Order (FDO) issued September 6, 2013, the Board decided challenges to critical area development regulation amendments adopted by San Juan County (CAOs): Ordinance 26-2012 (General Critical Areas Regulations), Ordinance 27-2012 (Geologically Hazardous Areas and Frequently Flooded Areas); Ordinance 28-2012 (Wetlands), and Ordinance 29-2012 (Fish & Wildlife Habitat Conservation Areas). Petitioners filed twelve separate Petitions for Review which together raised more than one-hundred distinct issues including challenges involving public participation, property rights, external consistency, failures to properly designate and protect critical areas, failures to properly include Best Available Science (BAS) and State Environmental Policy Act violations.

1 The Board concluded in its FDO that Common Sense Alliance, P. J. Taggares  
2 Company, William H. Wright, and San Juan Builders Association had failed to meet their  
3 burdens of proof on the issues they raised. The Board further concluded Petitioner Friends  
4 of the San Juans had met its burden of proof to establish GMA violations in regards to some  
5 of their issues.

6 On October 2, 2013, Common Sense Alliance and P. J. Taggares Company filed  
7 separate appeals challenging portions of the FDO in the San Juan County Superior Court.<sup>1</sup>  
8 Pursuant to WAC 242-03-860, motions for stay of effectiveness of the Board's final order  
9 were promptly filed with the Board.<sup>2</sup> Both San Juan County and Friends of the San Juans  
10 filed timely responses objecting to the entry of a stay.<sup>3</sup>  
11

### 12 **APPLICABLE LAW**

13 In issuing a final order finding noncompliance with the requirements of the GMA, the  
14 Board must remand the matter to the affected jurisdiction and "specify a reasonable time . . .  
15 within which the . . . county . . . shall comply. . . ." RCW 36.70A.300(3)(b). Thereafter, the  
16 Board is required to hold a hearing and render a determination on compliance. The  
17 compliance hearing "shall be given the highest priority of business to be conducted by the  
18 board." RCW 36.70A. 330(2).  
19

20 WAC 242-03-860 – Stay, provides:  
21

22 The presiding officer pursuant to RCW 34.05.467 or the board pursuant to  
23 RCW 34.05.550(1) may stay the effectiveness of a final order upon motion  
24 for stay filed within ten days of filing an appeal to a reviewing court.

25 A stay may be granted if the presiding officer or board finds:  
26

27 (1) An appeal is pending in court, the outcome of which may render the case  
28 moot; and

29 (2) Delay in application of the board's order will not substantially harm the  
30 interest of other parties to the proceedings; and  
31

32 

---

<sup>1</sup> San Juan County Cause No. 13-2-05190-8 and No. 13-2-05191-6, both filed October 2, 2013.

<sup>2</sup> Motion for Stay by Common Sense Alliance and P.J. Taggares Company, filed October 3, 2013.

<sup>3</sup> Objection to Motion for Stay, filed October 10, 2013; Friends of the San Juans Brief in Opposition to Motion for Stay, filed October 11, 2013.

1 (3)(a) Delay in application of the board's order is not likely to result in actions  
2 that substantially interfere with the goals of the GMA, including the goals and  
3 policies of the Shoreline Management Act; or

4 (b) The parties have agreed to halt implementation of the noncompliant  
5 ordinance and undertake no irreversible actions regarding the subject matter  
6 of the case during the pendency of the stay; and

7 (4) Delay in application of the board's order furthers the orderly  
8 administration of justice.

9 The board's order granting a stay will contain appropriate findings and  
10 conditions. A board order denying stay is not subject to judicial review.

## 11 **DISCUSSION**

12  
13 As the Court of Appeals recently acknowledged,<sup>4</sup> pendency of an appeal of a Growth  
14 Board decision does not prohibit a County from taking legislative action to comply with the  
15 Board's order. Further, the GMA "arguably *requires* the Growth Board to review a County's  
16 progress toward compliance" and to continue enforcement of its orders notwithstanding  
17 pendency of an appeal.<sup>5</sup> WAC 242-03-860 provides a narrow exception if the Board finds a  
18 delay in compliance with the Board's order is not likely to result in actions that substantially  
19 interfere with the GMA goals. The motion for stay of effectiveness of the Board's FDO  
20 directing the County to achieve compliance by March 5, 2014, was timely filed and  
21 objections have been filed.

22  
23 The Board finds and concludes, based on review of the FDO, the CSA motion, the  
24 County's and Friends' objections and WAC 242-03-860, that the request for a stay should  
25 be denied. While the outcome of the appeals now pending in court may render moot some  
26 portions of the FDO, or certain aspects of subsequent compliance proceedings, the case will  
27 not be rendered moot in its entirety.<sup>6</sup> WAC 242-03-860(1).

28  
29  
30  
31 <sup>4</sup> *Clark County v. Western Washington Growth Management Hearings Board*, 161 Wn. App. 204, 227 (2011)),  
32 the Supreme Court granted review on narrow grounds and the Court of Appeals was reversed on those  
grounds; the decision did not affect the quoted language. *Clark County v. W. Wash. Growth Mgmt. Hearings*  
*Bd.*, 177 Wn.2d 136 (2013).

<sup>5</sup> 161 Wn. App. at 227, n.17 (emphasis in original).

<sup>6</sup> *King County v. Cent. Puget Sound Bd.*, 91 Wn. App. 1 (Wash. Ct. App. 1998), (citing *Sorenson v. City of*  
*Bellingham*, 80 Wn.2d 547, 558, (1972)). "An appeal is moot when it presents purely academic issues and

1 San Juan County asserts "delay in the implementation of the Board's order will  
2 prolong the County's ability to achieve compliance which results in harm to the County." The  
3 Friends similarly allege delay would "substantially harm" their interests. The County also  
4 observes appeals can be lengthy, that while appeals may result in further necessary  
5 amendments of the ordinances, it is unlikely to affect the entirety of the Board's order and a  
6 stay will prevent the County from achieving compliance with those parts of the FDO not  
7 appealed. WAC 242-03-860(2). In that regard, the Board observes that while San Juan  
8 County Ordinance No. 3-2013 extended the effective date of the critical areas ordinances to  
9 March 1, 2014, appeals may well extend beyond that date and thus delay the County's  
10 efforts to achieve compliance even further.  
11

12 The four adopted CAO ordinances include significant improvements in critical area  
13 protection, most of which are not subject to the pending superior court appeals. Delay in  
14 achieving compliance with the FDO and in implementation of the Critical Areas ordinances  
15 may well result in actions that substantially interfere with the goals of the GMA.  
16 Furthermore, there has been no agreement to further halt implementation of the non-  
17 compliant amendments nor agreement to avoid irreversible actions regarding the subject  
18 matter of the case during the pendency of the stay. WAC 242-03-860(3)(a) & (b)  
19

20 Finally, the moving parties have failed to establish a delay in "application of the  
21 board's order furthers the orderly administration of justice." WAC 242-03-860 (4).  
22

## 23 ORDER

24 Based upon WAC 242-03-860, the Final Decision and Order in Case No. 12-3-0002c,  
25 the CSA motion and the filed objections, the Board denies the motion for stay.  
26  
27  
28  
29  
30  
31  
32

---

when it is not possible for the court [Board] to provide effective relief. If an appeal is moot, it should be dismissed."

1 Dated this 17th day of October, 2013.

2  
3  
4 William Roehl, Presiding Officer

5  
6 Nina Carter, Board Member

7  
8  
9 Raymond Paoella, Board Member